

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-321-T - ORDER NO. 2009-694

OCTOBER 9, 2009

IN RE: Application for Approval of Transfer of)	ORDER APPROVING
Class E (Household Goods) Certificate of)	TRANSFER OF CLASS E
Public Convenience and Necessity No. 9737)	(HOUSEHOLD GOODS)
from Portable Storage of Columbia, LLC to)	CERTIFICATE OF PUBLIC
Portable Storage and Moving of Columbia,)	CONVENIENCE AND
LLC)	NECESSITY NO. 9737

This matter comes before the Public Service Commission of South Carolina (“Commission”) on an Application filed by Portable Storage and Moving of Columbia, LLC (“Portable Moving” or “Applicant”) seeking the transfer of Class E Certificate of Public Convenience and Necessity No. 9737 currently held by Portable Storage of Columbia, LLC (“Portable Storage”). This request follows Portable Moving’s purchase of Portable Storage. On September 2, 2009, by Order No. 2009-569, the Commission granted Portable Moving interim use of Certificate No. 9737 while a decision on the transfer was pending.

Transfers of Certificates are governed by 26 S.C. Code Ann. Regs. 103-135 (Supp. 2008). This regulation requires in pertinent part:

1. Application Required. Application for approval of sale, lease or other transfer of a Certificate of PC&N or FWA shall be filed with the commission and served on the ORS. The application forms shall be provided by the commission. No application is deemed filed until all the required information is completed and all the appropriate signatures obtained.

3. Application to Sell or Otherwise Transfer a Certificate of PC&N.

- a. If the application is for approval of a sale or other transfer of a certificate, a copy of the proposed sales or other transfer agreement must be filed with the application and must contain the entire agreement between parties, including (1) an accurate description of the operating rights and other property to be transferred, and (2) the purchase price agreed upon and all the terms and conditions with respect to the payment of the same.
- b. No sale or other transfer of a Certificate of PC&N shall be approved by the commission until the transferor (seller) has filed with the commission and served on the ORS a statement under oath showing (1) all assets of the holder of the certificate to be sold, (2) all debts and claims against the transferor (seller) of which such seller has any knowledge or notice, (3) wages due employees of the transferor (seller), (4) unremitted COD collections due shippers, (5) claims for loss of or damage to goods transported or received for transportation, (6) claims for overcharges on property transported, and (7) interline accounts due other carriers. There also shall be filed with the commission and served on the ORS a verified statement from the transferee (purchaser) or an authorized agent or officer thereof, guaranteeing the payment of all just obligations as listed in the sworn statement of the seller. This subsection shall not be applicable to sales by personal representatives of deceased or incompetent persons, receivers, or trustees in bankruptcy under court order.

4. Proof Required. The commission shall approve an application for lease, sale, or other transfer of a Certificate of PC&N made under this section upon finding (1) that sale, assignment, pledge, transfer, change of control, lease, merger, or combination thereof will not adversely affect the service to the public under said certificate, (2) that the person acquiring said certificate or control thereof is fit, willing, and able to perform such service to the public under said certificate, and (3) that all services under said certificate have been continuously offered and reasonably provided to the public for a period of time not less than twelve months prior to the date of the filing of the application for approval of the sale, lease or transfer of said certificate, or, in lieu thereof, that any suspension of service exceeding thirty (30) days shall have been approved by the commission, seasonal suspensions excepted. No sale, lease, transfer, assignment, or hypothecation of a Certificate of PC&N will be approved where such action would be destructive of competition or would create an unlawful

monopoly. If the application does not contain evidence that the authorized services have been continuously offered and reasonably provided to the public for a period of time not less than twelve (12) months prior to the date of the filing of the application, the application may be denied.

6. It is unlawful for any person to sell, lease, or otherwise transfer a Class E Certificate of PC&N issued or authorized to be issued after July 1, 1983, under the provisions of Chapter 23 of Title 58 for money, goods, services, or any other thing of value... A certificate may be transferred incident to the sale or lease of property or assets owned or used by a regulated motor carrier, provided the approval of the commission for the transfer of the certificate is first obtained and that the certificate itself is not transferred for value or utilized to enhance the value of other property transferred. Nothing herein shall affect the sale, lease, or otherwise transfer of a certificate of public convenience and necessity issued prior to July 1, 1983.

26 S.C. Code Ann. Regs. 103-135 (Supp. 2008). As this matter only concerns the transfer of a Certificate of Public Convenience and Necessity, we find that Sections 103-135(2) regarding the lease of Certificates, 103-135(3)(c) regarding renewal of Certificates, 103-135(5) regarding dividing operating rights of Certificates, and 103-135(7) regarding the sale or lease of Certificates of FWA do not apply to the particular circumstances of this Docket and have been omitted from the citation above.

In meeting the specific requirements of 26 S.C. Code Ann. Regs. 103-135(3)(b), a sworn statement by Portable Storage provides that all assets sold are included in the Purchase and Sale Agreement as well as its related attachments, which is incorporated as Exhibit C to the Application. In addition, Portable Storage provides that there are no claims or debts against the transferor, no unremitted COD or collections due shippers, no claims for loss or damage to goods transported or received for transportation, no claims for overages on property transported, no interline accounts due other carriers, and no

wages due employees.¹ Moreover, Portable Moving agrees to payment in the Purchase and Sale Agreement.

Concerning the other requirements, transfer of Certificate No. 9737 will not adversely affect service to the public pursuant to 26 S.C. Code Ann. Regs. 103-135(4)(1), since Portable Moving has been operating under this Certificate on an interim basis with no complaints. Additionally, the record reflects the proposed transfer of Certificate No. 9737 meets the twelve month constraint found under 26 S.C. Code Ann. Regs. 103-135(4)(3) by showing customer contracts of Transferor Portable Storage dating from the summer of 2008 through the summer of 2009.² Lastly, the record shows that Portable Moving meets the fit, able, and willing mandate of 26 S.C. Code Ann. Regs. 103-135(2).

Whether a company is fit, able, and willing to provide services depends on how it meets the following definition of those terms under 26 S.C. Code Ann. Regs. 103-133(1)(a)-(c) (Supp. 2008).

- a. FIT. The applicant must demonstrate or the commission determines that the applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.D.P.S. safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina, and agree to operate in compliance with these statutes and regulations.
- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The applicant should also provide evidence in the form of insurance

¹ See Application at 8.

² See Supplement to Application filed on August 7, 2009

policies or insurance quotes, indicating that he is aware of the commission's insurance requirements and the costs associated therewith. Additionally, the applicant can file a statement indicating the applicant's purpose for seeking a Class E Certificate, the applicant's 5-year plan if the commission grants the applicant a Class E Certificate, and such other information that may be contained in a business proposal.

- c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

26 S.C. Code Ann. Regs. 103-133(1)(a)-(c) (Supp. 2008). According to the Application, Portable Moving is "Fit" to provide services under Certificate No. 9737 as no outstanding judgments are pending, and the Applicant has certified that it is familiar with all statutes and regulations, including safety operations in South Carolina, and agrees to operate in compliance with these statutes and regulations. Furthermore, the record indicates that Portable Moving has a history of compliance with South Carolina statutes and regulations.³

In addition, the record indicates Portable Moving is "Able" to provide services under Certificate No. 9737 as the Application demonstrates that it has either purchased or leased, on a long-term basis, necessary equipment to provide the service for which it is applying. The Applicant has also filed an insurance quote attached to the Application that meets the requirements for Class E (Household Goods) Certificate holders as set forth in 26 S.C. Code Ann. Regs. 103-172 and 103-173 (Supp. 2008).

Lastly, submission of the Application by Portable Moving is a sufficient demonstration that it is "Willing" to provide services under Certificate No. 9737.

³ORS Letter dated August 7, 2009.

FINDINGS OF FACT:

1. We find that a copy of the Purchase and Sale agreement was filed with the Application and contains the entire agreement between parties, including an accurate description of the operating rights and other property to be transferred, the purchase price agreed upon, and all the terms and conditions with respect to the payment of the same;
2. Portable Storage and Moving of Columbia, LLC has provided the sworn statements required by 26 S.C. Code Ann. Regs. 103-135(3)(b);
3. The transfer will not adversely affect service to the public under Certificate No. 9737;
4. Portable Storage and Moving of Columbia, LLC is fit, able, and willing to perform services to the public under Certificate No. 9737, but must meet the specific filing instructions with the Office of Regulatory Staff that are detailed in the “ORDERED” section below;
5. The transfer of Certificate No. 9737 will not be destructive of competition or create an unlawful monopoly; and
6. The transfer of Certificate No. 9737 is incident to the sale or lease of the assets of its holder, Portable Storage of Columbia, LLC, and it is not being transferred for value or utilized to enhance the value of other property being transferred.

IT IS THEREFORE ORDERED:

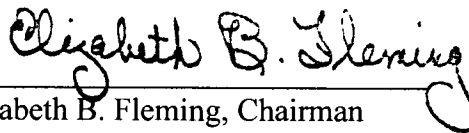
1. The transfer of Certificate No. 9737 from Portable Storage of Columbia, LLC to Portable Storage and Moving of Columbia, LLC is approved.

2. The Applicant shall file with the Office of Regulatory Staff the proper insurance, safety rating, and other information required by S.C. Code Ann. Section 58-23-10 et. seq. (1976), as amended, and by 26 S.C. Code Ann. Regs. 103-100 through 103-241 of the Commission's Rules and Regulations for Motor Carriers, as amended, and 23A S.C. Code Ann. Regs. 38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission. If the Applicant has not complied with these requirements within this time frame, interim use of the Certificate allowed by Order No. 2009-569 (September 2, 2009) shall expire, and the Certificate will be void.

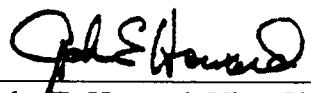
3. Upon compliance with S.C. Code Ann. Section 58-23-10 et. seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann. Regs. Vol. 26 (1976), as amended, an amended Certificate specifying Portable Storage and Moving of Columbia, LLC as the Certificate holder shall be issued by the Office of Regulatory Staff authorizing the motor carrier services granted herein.

4. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:


Elizabeth B. Fleming, Chairman

ATTEST:


John E. Howard, Vice Chairman
(SEAL)